



STATE OF WASHINGTON
WASHINGTON STATE BOARD OF HEALTH
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May 8, 2002

TO: Washington State Board of Health Members

FROM: Thomas Locke, M.D., M.P.H. Board Member
Don Sloma, M.P.H., Executive Director

RE: Public Hearing on Proposed Rule Changes for WAC 246-100-206, 207 and 208 -
Standards for HIV Counseling and Testing

Background and Summary:

On March 14, 2001, the Board approved a motion stating its intention to consider changes to WAC 246-100 as that Chapter describes standards for AIDS counseling, pre-test counseling, and post-test counseling associated with HIV testing. Dr. Locke was identified as the Board sponsor for the activity.

Since that time, we have worked with Jack Jourden, John Peppert and others in the Department of Health to develop a proposal that modifies current Board rules governing HIV counseling standards, primarily as they apply to pregnant women. The effort involved numerous meetings and correspondence with interested parties, including the Governor's Advisory Council on HIV and AIDS, the Washington State Medical Association, the AIDSNETS Council, the Statewide Perinatal Advisory Committee, and the MCH/HIV Community Advisory Group. The proposal before you today, which is Attachment 1, is the result of that effort. Attachment 2 contains the written comments received during development of the proposed rule.

This rule change is intended to remove barriers to implementation of national recommendations to increase HIV counseling and testing in pregnant women, reduce unnecessary behavior change counseling, and through the administration of antiretroviral medications, minimize the number of infants born with HIV disease.

The Department of Health's Significant Legislative Rule Analysis (included in Attachment 3) estimates that 59% of the 81,004 babies born in Washington in 2000 had moms who received prenatal HIV tests. They estimate that the proposed rule change will increase this proportion to 90%. If so, two perinatal HIV transmissions per year will be prevented. The resultant medical cost savings are estimated to more than offset the costs of the additional tests.

The proposed rule changes existing standards for HIV counseling and testing as follows:

- Clarification is added that a violation of Board rules regarding control and treatment of a sexually transmitted disease is subject to penalty under existing law;
- HIV pre-test counseling standards for pregnant women are altered by replacing mandatory counseling with oral or written HIV education in all but high risk cases;
- A general consent for a routine battery of other tests is permitted to suffice as informed consent for HIV testing;
- HIV testing must be performed on pregnant women routinely, unless they refuse;
- If a pregnant woman refuses testing, the refusal must be noted in her medical record;
- If a high-risk pregnant woman refuses testing, she must be counseled and referred for necessary follow-up services; and
- The right of a pregnant woman to refuse HIV testing without risking denial of medical care for herself or for her infant is stated explicitly.

Some are concerned that the change allowing a general consent to suffice as informed consent for HIV testing may not provide adequate notice to a pregnant woman that HIV testing will be performed unless she refuses. To respond to this concern, Dr. Locke suggests the proposed rule be amended to require specific notice in all cases where an HIV test will be part of a routine battery of tests.

The public hearing regarding the proposed changes to WAC 246-100-206, 207 and 208, in accordance with the Administrative Procedures Act, is scheduled to begin at 11 AM today.

Recommended Board Action:

Unless the Board makes a different judgment based on information gathered during the public hearing, Dr. Locke recommends that the Board adopt the proposed changes to WAC 246-100-206, 207 and 208 as proposed in the CR-102, except that Section 208(1)(c) be amended as follows (proposed new language is underlined):

(c) Obtaining the informed consent of the pregnant woman, separately or as part of the consent for a battery of other routine tests provided that the woman is specifically informed in writing or verbally that a test for HIV is included.

Attachments (4)